IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.25790 of 1999

Dated: 24-09-2007

Between:

S. Tata Rao, s/o Ganga Raju,
r/o Sandhipudi, Alamuru Mandal,
East Godavari District.

... Petitioner

and

1. The Agricultural Market Committee,
   Alamuru, rep. by its Selection Grade Secretary,
   East Godavari District and another.

... Respondents

ORDER:

Questioning the order dated 03-11-1999 passed in Appeal No.259/99 by second respondent – Regional Joint Director of Marketing, Visakhapatnam; the present writ petition has been filed.

2. Facts, in brief, are: Petitioner along with some others did partnership business in the name and style of Sri Lakshminarayana Rice Mill and the same was wound up in 1986 due to heavy loss. The first respondent – Agricultural Market Committee vide proceedings dated 29-06-1992 passed three separate assessment orders assessing the

alleged market fee said to be payable by the petitioner for the years 1983-84, 1984-85 and 1985-86 and later on a show cause notice was also issued on 03-10-1992 demanding payment of the market fee assessed. Thereupon, petitioner filed W.P.No.16515 of 1992 and this Court disposed of the said writ petition with a direction to file objections for the assessment orders passed by first respondent. The first respondent vide proceedings in ROC.No.693 of 1998, dated 10-09-1998 directed the petitioner to pay the alleged market fee of Rs.36,069/- within a period of 15 days from the date of receipt of notice. Immediately after receipt of the notice, petitioner submitted a detailed explanation on 29-09-1998. However, as first respondent was taking steps to initiate prosecution, petitioner filed W.P.No.33253 of 1998 questioning the proceedings dated 10-09-1998. The said writ petition was disposed of on 13-11-1998 with a direction to the petitioner to file appeal against the proceedings dated 10-09-1998 and seek appropriate directions. Pursuant to the said directions, petitioner filed an appeal before second respondent,
who dismissed the appeal by order dated 03-11-1999. Assailing the said order, the present writ petition has been filed.

3. Heard learned counsel for the parties.

4. According to learned counsel for the petitioner, the appellate authority is duty bound to pass a speaking order, which has not been done in the instant case, while passing the impugned order dated 03-11-1999.

5. In the light of the submission made by the learned counsel for the petitioner, this Court looked into the impugned order narrating various factual aspects that have taken place prior to 1999 i.e. about the assessment order, demand order, the writ petitions filed by the writ petitioner etc., wherein the appellate authority stated that the appellants are liable to pay the market fees of Rs.36,069/-. It may be apt to refer to the relevant paragraph--

> "The affidavits filed and the material record produced in support of their claim by both the parties have been examined. The arguments of both the parties were heard on 2-11-1999 in person. The only contention of the appellants is

> that the action of the Market Committee is barred by limitation. The Judgments referred to above have no relevance to this case."

6. From the above it is not known as to what is the conclusion of the appellate authority. When once a contention is taken saying that the said action is barred by limitation, the appellate authority ought to have gone into the aspect, discussed the same and given a finding. As already stated, except narrating all that has taken place prior to the filing of the appeal, the appellate authority has not stated anything about the merits or demerits of the appeal. Hence, it can be definitely construed that it is a non-speaking order.

7. No doubt, learned standing counsel for respondents vehemently opposed the submissions of the learned Counsel for the petitioner stating that a revision as provided for under Section 12(f) of the Andhra Pradesh Agricultural Produce and Live Stock Act, 1966 (for short, 'the Act') is provided and the petitioner without exhausting the said remedy approached this Court and filed this writ petition.

8. May be it is true that a revision is provided for, but a revision cannot be termed as an alternative remedy. A statutory appeal is different from that of a statutory revision. Hence, this Court is not inclined to accept the contention of the learned standing counsel for respondents and in the light of the foregone discussion, this Court has no hesitation to come to the conclusion that the order dated 03-11-1999 impugned in this writ petition, is a non-speaking order and is thus liable to be set aside.

9. Accordingly, the writ petition is allowed and the order dated 03-11-1999 is set aside remitting the matter to the appellate authority i.e., the Regional Joint Director of Marketing, Visakhapatnam with a direction to consider the said appeal again, after giving sufficient opportunity to the petitioner as well as the first respondent, and pass appropriate orders in accordance with law. However, as it is an old matter relating to 1992, the appellate authority i.e., the second respondent is directed to complete the entire enquiry within a period of three months from the date of receipt of a copy of this order. No costs.

JUSTICE GOPALAKRISHNA TAMADA

Dt.24-09-2007
GLV